

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

COVANTA HONOLULU RESOURCE  
RECOVERY VENTURE

Employer

and

Case 20-RC-140392

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL UNION 1260

Petitioner

ORDER

The Employer's request for special permission to appeal the Regional Director's direction of a mail ballot election is granted. Because the Regional Director did not abuse his discretion, the appeal is denied on the merits.<sup>1</sup>

The Employer's Request for Review of the Acting Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review.

MARK GASTON PEARCE, CHAIRMAN

PHILIP A. MISCIMARRA, MEMBER

KENT Y. HIROZAWA, MEMBER

Dated, Washington, D.C., January 20, 2015.

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<sup>1</sup> Member Miscimarra respectfully dissents because he would grant the Employer's appeal from the Regional Director's direction of a mail ballot election. A manual ballot election is presumptively appropriate. *Nouveau Elevator Industries*, 326 NLRB 470, 471 (1998). Here, a manual election would overlap with all unit employees' scheduled shifts if held on certain consecutive days in any given week. Although considerations related to the year-end holiday season might suggest that dates in early January 2015 were more appropriate than attempting to hold the election on December 30 and 31, 2014 – which would mean a manual election would exceed by a few days the goal of holding elections within 30 days after the date of Decision and Direction of Election (D&DE) – the Regional Director has the discretion to extend the 30-day period, and satisfying the 30-day goal is not a factor that justifies a mail ballot election. See NLRB Casehandling Manual (Part Two) Representation Proceedings §§ 11284, 11301.2, 11302.1, 11284; see also *San Diego Gas & Electric*, 325 NLRB 1143 (1998). Moreover, the mail ballot election has likewise, and predictably, resulted in a time frame of more than 30 days between the date of the D&DE and the election's completion. For these reasons, Member Miscimarra believes the relevant facts do not overcome the presumption in favor of a manual election, and he would find that it constituted an abuse of discretion to order a mail ballot election in these circumstances.

Member Miscimarra agrees with the denial of review, but would apply traditional community of interest standards, and not *Specialty Healthcare*, 357 NLRB No. 83 (2011), *enfd. sub nom Kindred Nursing Centers East LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013) for the reasons stated in *Macy's, Inc.*, 361 NLRB No. 4, slip op. at 22, 31-32 (2014) (Member Miscimarra, dissenting).